Falls Church, VA; University of Arkansas at Pine Bluff, Pine Bluff, AR; University of Texas at El Paso, El Paso, TX; Voorheese College, Denmark, SC; Wilberforce University, Wilberforce, OH; and Winston-Salem State University, Winston-Salem, NC.

The general area of UNCFSP–RDC's planned activity is: (a) conduct research and development activities that advance the state-of-the-art as well as the scientific, technology, engineering and mathematical skills in the fields that are needed to develop and transition new technologies for national defense, homeland security, medicine, energy and space; (b) to enter into a Section 845 "Other Transactions" Agreement with the U.S. Army (the "Government") for the funding of certain research and development to be conducted, in partnership with the Government, the Consortium and other Consortium Members, to enhance the capabilities of the U.S. Government and its departments and agencies in the fields utilizing science, technology, engineering and mathematics; (c) to increase the competitiveness of Historically Black Colleges and Universities and Other Minority Institutions including Hispanic Serving Institutions, Tribal Colleges and Universities and Other Minority Serving Institutions in Government research and development programs by partnering and collaborating with each other and the Government laboratories; (d) to provide a unified and coordinated message to the U.S. Government's Legislative Branch and the Departments of Defense, Homeland Security, Energy, and Health and Human Services and NASA as to the strategic importance of HBCUs and MIs in Federal research and development; and (e) to define programs and obtain program funding that is focused on the development of this under utilized national asset that will result in improvements or new research and development in all the sciences.

Additional information concerning the UNCFSP–RDC can be obtained from Mr. Darold L. Griffin, Organization Committee, UNCFSP–RDC, in care of Engineering and Management Executive, Inc. (EME), 101 South Whiting Street, Suite 204, Alexandria, VA 22304–3416, telephone (703) 212–8030, Ext. 224, fax (703) 212–8035, e-mail: *emelbmt@aol.com;* Mr. Michael J. Hester, Vice President, UNCF Special Programs Corporation, 6402 Arlington Boulevard, Suite 600, Falls Church, VA 22042, telephone (703) 205–8133, fax (703) 205–7651, e-mail: *michael.hester@uncfsp.org;* or Dr. James J. Valdes (PhD), Scientific Advisor for Biotechnology, U.S. Army Edgewood Chemical and Biological Center, ATTN: RDCB–DR, 5183 Blackhawk Road, Aberdeen Proving Ground, MD 21020–5424, telephone (410) 436–1396, fax (410) 436–3930, e-mail: *james.valdes@us.army.mil.*

Patricia A. Brink,

Director of Civil Enforcement, Antitrust Division.

[FR Doc. 2010–32430 Filed 12–27–10; 8:45 am]

BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. *Lucasfilm Ltd.;* Proposed Final Judgment and Competitive Impact Statement

Notice is hereby given pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. 16(b)–(h), that a proposed Final Judgment, Stipulation and Competitive Impact Statement have been filed with the United States District Court for the District of Columbia in *United States of America* v. *Lucasfilm Ltd.,* Civil Case No. 1:10–cv–02220. On December 21, 2010, the United States filed a Complaint alleging that Lucasfilm Ltd. and Pixar entered into an agreement, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1, in which they agreed not to actively solicit each other's highly skilled digital animators and other employees, to notify each other when making an offer to an employee of the other company, and that the company making an offer to the other company's employee would not counteroffer above its initial offer. The proposed Final Judgment, filed the at same time as the Complaint, requires Lucasfilm to refrain from entering into similar agreements in the future.

Copies of the Complaint, proposed Final Judgment and Competitive Impact Statement are available for inspection at the Department of Justice, Antitrust Division, Antitrust Documents Group, 450 Fifth Street, NW., Suite 1010, Washington, DC 20530 (telephone: 202–514–2481), on the Department of Justice's Web site at *http://www.justice.gov/atr,* and at the Office of the Clerk of the United States District Court for the District of Columbia. Copies of these materials may be obtained from the Antitrust Division upon request and payment of the copying fee set by Department of Justice regulations.

Public comment is invited within 60 days of the date of this notice. Such comments, and responses thereto, will be published in the **Federal Register** and filed with the Court. Comments should be directed to James J. Tierney, Chief, Networks and Technology Section, Antitrust Division, U.S. Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530 (telephone: 202–307–6200).

Patricia A. Brink,

Director of Civil Enforcement.

United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530, *Plaintiff,* v. Lucasfilm Ltd., 1110 Gorgas Avenue, San Francisco, CA 94129, *Defendant.*
Case: 1:10–cv–02220.
Assigned To: Walton, Reggie B.
Assign. Date: 12/21/2010.
Description: Antitrust.

Complaint

The United States of America, acting under the direction of the Attorney General of the United States, brings this civil antitrust action to obtain equitable relief against Defendant Lucasfilm Ltd. ("*Lucasfilm*"), alleging as follows:

Nature of the Action

This action challenges under Section 1 of the Sherman Act an agreement between Lucasfilm and Pixar that restrained competition between them for highly skilled digital animators.

Lucasfilm and Pixar compete for highly skilled digital animators and solicit employees at other digital animation studios to fill employment openings. Lucasfilm and Pixar entered into an agreement not to cold call, not to make counteroffers under certain circumstances, and to provide notification when making employment offers to each other's employees. This agreement reduced Lucasfilm's and Pixar's ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. This agreement is facially anticompetitive. It eliminated significant forms of competition to attract digital animators and, overall, substantially diminished competition to the detriment of the affected employees who likely were deprived of competitively important information and access to better job opportunities.

Lucasfilm and Pixar's agreement is a restraint of trade that is per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1. The United States seeks an order prohibiting such an agreement.

Jurisdiction and Venue

Lucasfilm hires specialized digital animators throughout the United States, and sells completed digital animation

films throughout the United States. Such activities, including the recruitment and hiring activities at issue in this Complaint, are in the flow of and substantially affect interstate commerce. The Court has subject matter jurisdiction under Section 4 of the Sherman Act, 15 U.S.C. 4, and under 28 U.S.C. 1331 and 1337 to prevent and restrain Lucasfilm from violating Section 1 of the Sherman Act, 15 U.S.C. 1.

Venue is proper in this judicial district under Section 12 of the Clayton Act, 15 U.S.C. 22, and under 28 U.S.C. 1391(b)(2), (c). Lucasfilm transacts or has transacted substantial business here.

Defendant

6. Lucasfilm is a California corporation with its principal place of business in San Francisco, California.

Trade and Commerce

12. Digital animation labor is characterized by expertise and specialization. Lucasfilm and Pixar compete for digital animators on the basis of salaries, benefits, and career opportunities. In recent years, talented digital animation employees have been in high demand.

13. Although Lucasfilm and Pixar employ a variety of recruiting techniques, cold calling another studio's employees is an effective method of competing for digital animators. Cold calling involves communicating directly in any manner (including orally, in writing, telephonically, or electronically) with another firm's employee who has not otherwise applied for a job opening. Lucasfilm and Pixar frequently recruit employees by cold calling because other studios' employees have the specialized skills necessary for the vacant position and may be unresponsive to other methods of recruiting.

14. Lucasfilm and Pixar also aggressively bid against other digital animation studios for the services of talented employees and prospective employees. When the labor market is functioning without illegal competitive restraints, savvy employees can use these studios' aggressive tactics to extract multiple rounds of bidding, thus increasing their eventual salaries.

15. In a well-functioning labor market, employers compete to attract the most valuable talent for their needs. Lucasfilm's and Pixar's behavior both reduced their ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. Lucasfilm's and Pixar's agreement not to cold call, not to make counter offers under certain circumstances, and to provide notification when making employment offers is facially anticompetitive. It eliminated significant forms of competition to attract digital animators and, overall, substantially diminished competition to the detriment of the affected employees who likely were deprived of competitively important information and access to better job opportunities.

The Unlawful Agreement

16. Beginning no later than January 2005, Lucasfilm and Pixar agreed to a protocol regarding the recruitment of each other's employees. The agreement included three requirements: (1) That the firms not cold call each other's employees; (2) that the firms notify each other when making an offer to an employee of the other firm; and (3) that the firm making an offer to the other firm's employee not counteroffer above its initial offer.

17. This agreement was not ancillary to any legitimate collaboration between Lucasfilm and Pixar. Senior executives at Lucasfilm and Pixar reached this express agreement through direct and explicit communications. The executives actively managed and enforced the agreement through direct communications.

18. The agreement between Lucasfilm and Pixar covered all digital animators and other employees and was not limited by geography, job function, product group, or time period. Moreover, employees did not agree to this restriction.

19. In furtherance of this agreement, Pixar drafted the terms of the agreement with Lucasfilm and communicated those written terms to Lucasfilm. Both firms internally communicated the agreement to management and select employees with hiring or recruiting responsibilities.

20. Lucasfilm and Pixar, through their senior executives, policed potential breaches of the agreement. For example, twice in 2007, Pixar complained to Lucasfilm about recruiting efforts Lucasfilm had made. Complaints about breaches of the agreement led the parties to modify their conduct going forward to conform to the agreement.

Violation Alleged

(Violation of Section 1 of the Sherman Act)

21. The United States hereby incorporates paragraphs 1 through 20.

22. Lucasfilm is a direct competitor to Pixar for digital animators and other employees covered by the agreement at issue here. Lucasfilm's behavior both reduced its ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. This agreement is facially anticompetitive because it eliminated significant forms of competition to attract digital animators and, overall, substantially diminished competition to the detriment of the affected employees who likely were deprived of competitively important information and access to better job opportunities.

23. Lucasfilm's agreement constitutes an unreasonable restraint of trade that is per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1.

Requested Relief

The United States requests that the Court:

(A) Adjudge and decree that Lucasfilm's agreement not to compete constitutes an illegal restraint of interstate trade and commerce in violation of Section 1 of the Sherman Act;

(B) Enjoin and restrain Lucasfilm from enforcing or adhering to existing agreements that unreasonably restrict competition for employees;

(C) Permanently enjoin and restrain Lucasfilm from establishing any similar agreement unreasonably restricting competition for employees except as prescribed by the Court;

(D) Award the United States such other relief as the Court may deem just and proper to redress and prevent recurrence of the alleged violations and to dissipate the anticompetitive effects of the illegal agreements entered into by Lucasfilm; and

(E) Award the United States the costs of this action.

Dated this 21st day of December 2010.

Respectfully submitted,

FOR PLAINTIFF UNITED STATES:

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Certificate of Service

I, Adam Severt, hereby certify that on December 21, 2010, I caused a copy of the Complaint to be served on Defendant Lucasfilm by mailing the document via e-mail to the duly authorized legal representatives of the defendant, as follows:

FOR DEFENDANT LUCASFILM, LTD.,
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United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530, *Plaintiff,* v. Lucasfilm Ltd., 1110 Gorgas Avenue, San Francisco, CA 94129, *Defendant.*
Case: 1:10–cv–02220.
Assigned To: Walton, Reggie B.
Assign. Date: 12/21/2010.
Description: Antitrust.

Competitive Impact Statement

Plaintiff United States of America ("United States"), pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act ("APPA" or "Tunney Act"), 15 U.S.C. 16(b)–(h), files this Competitive Impact Statement relating to the proposed Final Judgment submitted for entry in this civil antitrust proceeding.

I. Nature and Purpose of the Proceeding

The United States brought this lawsuit against Defendant Lucasfilm Ltd. ("Lucasfilm") on December 21, 2010, to remedy a violation of Section 1 of the Sherman Act, 15 U.S.C. 1. The Complaint alleges that Lucasfilm entered an agreement with Pixar, pursuant to which each agreed to restrict certain employee recruiting practices. The effect of this agreement was to reduce competition for highly-skilled digital animators and other employees, diminish potential employment opportunities for those same employees, and interfere in the proper functioning of the price-setting mechanism that would otherwise have prevailed. The agreement is a naked restraint of trade and violates Section 1 of the Sherman Act, 15 U.S.C. 1.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment, which would remedy the violation by having the Court declare the agreement illegal, enjoin Lucasfilm from enforcing any such agreements currently in effect, and prohibit Lucasfilm from entering similar agreements in the future. The United States has sought a similar proposed Final Judgment against Pixar in a separate civil action, *United States* v. *Adobe Systems, Inc.,* No. 1:10–cv–01629, 75 FR 60820, 60828–30 (D.D.C. filed Sept. 24, 2010). The United States and Lucasfilm have stipulated that the proposed Final Judgment may be entered after compliance with the APPA, unless the United States withdraws its consent. Entry of the proposed Final Judgment would terminate this action, except that this Court would retain jurisdiction to construe, modify, and enforce the proposed Final Judgment and to punish violations thereof.

II. Description of the Events Giving Rise to the Alleged Violation of the Antitrust Laws

Lucasfilm and Pixar are rival digital animation studios. Beginning no later than January 2005, Lucasfilm and Pixar agreed to a three-part protocol that restricted recruiting of each other's employees. First, Lucasfilm and Pixar agreed they would not cold call each other's employees. Cold calling involves communicating directly in any manner (including orally, in writing, telephonically, or electronically) with another firm's employee who has not otherwise applied for a job opening. Second, they agreed to notify each other when making an offer to an employee of the other firm. Third, they agreed that, when offering a position to the other company's employee, neither would counteroffer above the initial offer.

The protocol covered all digital animators and other employees of both firms and was not limited by geography, job function, product group, or time period. Senior executives at the two firms agreed on the protocol through direct and explicit communications. In furtherance of this agreement, Pixar drafted the terms of the agreement with Lucasfilm and communicated those written terms to Lucasfilm. Both firms communicated the agreement to management and select employees with hiring or recruiting responsibilities. Twice in 2007, Pixar complained to Lucasfilm about recruiting efforts Lucasfilm had made. Complaints about breaches of the agreement led the two firms to alter their conduct going forward to conform to the agreement.

Lucasfilm's and Pixar's agreed-upon protocol disrupted the competitive market forces for employee talent. It eliminated a significant form of competition to attract digital animation employees and other employees covered by the agreement. Overall, it substantially diminished competition to the detriment of the affected employees who likely were deprived of information and access to better job opportunities.

The agreement was a naked restraint of trade that was per se unlawful under Section 1 of the Sherman Act, 15 U.S.C. 1.

III. The Agreement Was a Naked Restraint and Not Ancillary To Achieving Legitimate Business Purposes

Section 1 of the Sherman Act outlaws "[e]very contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several States." 15 U.S.C. 1. The Sherman Act is designed to ensure "free and unfettered competition as the rule of trade. It rests on the premise that the unrestrained interaction of competitive forces will yield the best allocation of our economic resources, the lowest prices, the highest quality and the greatest material progress * * *." *National Collegiate Athletic Ass'n* v. *Board of Regents of Univ. of Okla.,* 468 U.S. 85, 104 n.27 (1984) (quoting *Northern Pac. Ry.* v. *United States,* 356 U.S. 1, 4–5 (1958)).

The law has long recognized that "certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." *Northern Pac. Ry.,* 356 U.S. at 545; *accord, Catalano, Inc.* v. *Target Sales, Inc.,* 446 U.S. 643, 646 n.9 (1980). Such naked restraints of competition among horizontal competitors (*i.e.,* agreements that have a pernicious effect on competition with no redeeming virtue) are deemed per se unlawful.

The United States has previously challenged restraints on employment as per se illegal. In September 2010, the United States filed suit charging six high technology firms with a per se violation of Section 1 for entering bilateral agreements to prohibit each firm from cold calling the other firm's employees. *United States* v. *Adobe Systems, Inc.,* No. 1:10–cv–01629, Complaint, 75 FR 60822 (D.D.C. filed Sept. 24, 2010); Competitive Impact

Statement, 75 FR 60823 (D.D.C. filed Sept. 24, 2010).

The restraint challenged here is broader than the no cold call restraints challenged in *United States* v. *Adobe Systems, Inc.* The prohibition on counteroffers by non-employing firms renders the Lucasfilm-Pixar agreement, taken as a whole, more pernicious than an agreement to refrain from cold-calling, and is per se unlawful. *See National Soc'y of Prof. Engineers* v. *United States,* 435 U.S. 679, 695 (1978); *Harkins Amusement Enterprises, Inc.* v. *General Cinema Corp.,* 850 F.2d 477, 487 (9th Cir. 1988).

Prior to *United States* v. *Adobe Systems, Inc.,* the United States brought a per se challenge in 1996 to employment restraints contained within guidelines designed to curb competition between residency programs for senior medical students and residents of other programs. Members of the Association of Family Practice Residency Directors had agreed not to directly solicit residents from each other, conduct recognized as "per se unlawful" under Section 1. *United States* v. *Association of Family Practice Residency Doctors,* No. 96–575–CV–W–2, Complaint at 6 (W.D.Mo. May 28, 1996); Competitive Impact Statement, 61 FR 28891, 28894 (W.D.Mo. May 28, 1996). The Court entered an agreed-upon Final Judgment, enjoining the association from restraining competition among residency programs for residents, including enjoining all prohibitions on direct and indirect solicitation of residents from other programs. 1996–2 Trade Cases ¶ 71,533, 28894 (W.D.Mo. Aug. 15, 1996).

In analogous circumstances, the Sixth Circuit has held that an agreement among competitors not to solicit one another's customers was a per se violation of the antitrust laws. *U.S.* v. *Cooperative Theaters of Ohio, Inc.,* 845 F.2d 1367 (6th Cir. 1988). In that case, two movie theater booking agents agreed to refrain from actively soliciting each other's customers. Despite the defendants' arguments that they "remained free to accept *unsolicited* business from their competitors' customers," *id.* (emphasis in original), the Sixth Circuit found their "no-solicitation agreement" was "undeniably a type of customer allocation scheme which courts have often condemned in the past as a per se violation of the Sherman Act." *Id.* at 1373.

Antitrust analysis of downstream customer-related restraints applies equally to upstream monopsony restraints on employment opportunities. In 1991, the Antitrust Division brought an action against conspirators who competed to procure billboard leases and who had agreed to refrain from bidding on each other's former leases for a year after the space was lost or abandoned by the other conspirator. *United States* v. *Brown,* 936 F.2d 1042 (9th Cir. 1991) (affirming jury verdict convicting defendants of conspiring to restrain trade in violation of 15 U.S.C. 1). The agreement was limited to an input market (the procurement of billboard leases) and did not extend to downstream sales (in which the parties also competed). In affirming defendants' convictions, the appellate court held that the agreement was per se unlawful:

> The agreement restricted each company's ability to compete for the other's billboard sites. It clearly allocated markets between the two billboard companies. A market allocation agreement between two companies at the same market level is a classic per se antitrust violation.

Id. at 1045.

Allocation agreements cannot be distinguished from one another based solely on whether they involve input or output markets. Anticompetitive agreements in both input and output markets create allocative inefficiencies.[1] Hence, naked restraints on cold calling customers, suppliers, or employees are similarly per se unlawful.

Still, an agreement that would normally be condemned as a per se unlawful restraint on competition may nonetheless be lawful if it is ancillary to a legitimate procompetitive venture and reasonably necessary to achieve the procompetitive benefits of the collaboration. Ancillary restraints therefore are not per se unlawful, but rather evaluated under the rule of reason, which balances a restraint's procompetitive benefits against its anticompetitive effects.[2] To be considered "ancillary" under established antitrust law, however, the restraint must be a necessary or intrinsic part of the procompetitive collaboration.[3] Restraints that are broader than reasonably necessary to achieve the efficiencies from a business collaboration are not ancillary and are properly treated as per se unlawful.

Although Lucasfilm and Pixar have at times engaged in legitimate collaborative projects, the recruiting agreement into which they entered was not, under established antitrust law, properly ancillary to those collaborations. The agreement was not tied to any specific collaboration. The agreement extended to all employees at the firms, regardless of any employee's relationship to any collaboration. The agreement was not limited by geography, job function, product group, or time period. The agreement was not reasonably necessary for any collaboration and hence, not a legitimate ancillary restraint.

Lucasfilm's agreement with Pixar is per se unlawful under Section 1 of the Sherman Act. The two firms' concerted behavior both reduced their ability to compete for employees and disrupted the normal price-setting mechanisms that apply in the labor setting. The agreement is facially anticompetitive because it eliminated a significant form of competition to attract digital animators and other employees. Overall, it substantially diminished competition to the detriment of the affected employees who likely were deprived of competitively important information and access to better job opportunities.

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[1] *See Weyerhaeuser Co.* v. *Ross-Simmons Hardwood Lumber Co., Inc.,* 549 U.S. 312, 321 (2007) ("Predatory-pricing and predatory-bidding are analytically similar. This similarity results from the close theoretical connection between monopoly and monopsony.")

[2] *See* generally Department of Justice, Antitrust Division, and Federal Trade Commission, *Antitrust Guidelines for Collaborations Among Competitors* § 1.2 (2000) ("*Collaboration Guidelines*"). *See also Major League Baseball* v. *Salvino,* 542 F.3d 290, 339 (2d Cir. 2008) (Sotomayor, J., concurring) ("a per se or quick look approach may apply * * * where a particular restraint is not reasonably necessary to achieve any of the efficiency-enhancing benefits of a joint venture and serves only as a naked restraint against competition."); *Dagher* v. *Saudi Refining, Inc.,* 369 F.3d 1108, 1121 (9th Cir. 2004) ("reasonably necessary to further the legitimate aims of the joint venture"); *rev'd on other grounds sub nom. Texaco* v. *Dagher,* 547 U.S. 1, 8 (2006); *Rothery Storage & Van Co.* v. *Atlas Van Lines, Inc.,* 792 F.2d 210, 227 (DC Cir. 1986) ("the restraints it imposes are reasonably necessary to the business it is authorized to conduct"); *In re Polygram Holdings., Inc.,* 2003 WL 21770765 (F.T.C. 2003) (parties must prove that the restraint was "reasonably necessary" to permit them to achieve particular alleged efficiency), *aff'd, Polygram Holdings, Inc.* v. *F.T.C.,* 416 F.3d 29 (DC Cir. 2005).

[3] *See Rothery Storage & Van Co.,* 792 F.2d at 227 (national moving network in which the participants shared physical resources, scheduling, training, and advertising resources, could forbid contractors from free riding by using its equipment, uniforms, and trucks for business they were conducting on their own); *Salvino,* 542 F.3d at 337 (Sotomayor, J., concurring) (Major League Baseball teams created a formal joint venture to exclusively license, and share profits for, team trademarks, resulting in "decreased transaction costs, lower enforcement and monitoring costs, and the ability to one-stop shop. * * *" Such benefits "could not exist without the * * * agreements."); *Addamax* v. *Open Software Found.,* 152 F.3d 48 (1st Cir. 1998) (computer manufacturers formed nonprofit joint research and development venture to develop operating system; agreement on price to be paid for security software that was used by joint venture was ancillary to effort to develop a new system). *See also Collaboration Guidelines* at § 3.2 ("[I]f the participants could achieve an equivalent or comparable efficiency-enhancing integration through practical, significantly less restrictive means, then * * * the agreement is not reasonably necessary.").

IV. Explanation of the Proposed Final Judgment

The proposed Final Judgment sets forth (1) Conduct in which Lucasfilm may not engage; (2) conduct in which Lucasfilm may engage without violating the proposed Final Judgment; (3) certain actions Lucasfilm is required to take to ensure compliance with the terms of the proposed Final Judgment; and (4) oversight procedures the United States may use to ensure compliance with the proposed Final Judgment. Section VI of the proposed Final Judgment provides that these provisions will expire five years after entry of the proposed Final Judgment.

A. Prohibited Conduct

The proposed Final Judgment is substantially similar to that proposed in *United States* v. *Adobe Systems, Inc.,* No. 1:10–cv–01629, Proposed Final Judgment, 75 FR 60828–30 (D.D.C. Sept. 24, 2010). Section IV of the proposed Final Judgment preserves competition for employees by prohibiting Lucasfilm, and all other persons in active concert or participation with Lucasfilm with notice of the proposed Final Judgment, from agreeing, or attempting to agree, with another person to refrain from cold calling, soliciting, recruiting, or otherwise competing for employees of the other person. It also prohibits Lucasfilm from requesting or pressuring another person to refrain from cold calling, soliciting, recruiting, or otherwise competing for employees of the other person. These provisions prohibit agreements not to make counteroffers and agreements to notify each other when making an offer to each other's employee.

B. Conduct Not Prohibited

The Final Judgment does not prohibit all agreements related to employee solicitation and recruitment. Section V makes clear that the proposed Final Judgment does not prohibit "no direct solicitation provisions"[4] that are reasonably necessary for, and thus ancillary to, legitimate procompetitive collaborations.[5] Such restraints remain subject to scrutiny under the rule of reason.

Section V.A.1 does not prohibit no direct solicitation provisions contained in existing and future employment or severance agreements with Lucasfilm's employees. Narrowly tailored no direct solicitation provisions are often included in severance agreements and rarely present competition concerns. Sections V.A.2–5 also make clear that the proposed Final Judgment does not prohibit no direct solicitation provisions reasonably necessary for:

1. Mergers or acquisitions (consummated or unconsummated), investments, or divestitures, including due diligence related thereto;

2. Contracts with consultants or recipients of consulting services, auditors, outsourcing vendors, recruiting agencies or providers of temporary employees or contract workers;

3. The settlement or compromise of legal disputes; and

4. Contracts with resellers or OEMs; contracts with certain providers or recipients of services; or the function of a legitimate collaboration agreement, such as joint development, technology integration, joint ventures, joint projects (including teaming agreements), and the shared use of facilities.

Section V of the proposed Final Judgment contains additional requirements applicable to no direct solicitation provisions contained in these types of contracts and collaboration agreements. The proposed Final Judgment recognizes that Lucasfilm may sometimes enter written or unwritten contracts and collaboration agreements and sets forth requirements that recognize the different nature of written and unwritten contracts.

Thus, for written contracts, Section V.B of the proposed Final Judgment requires Lucasfilm to: (1) Identify, with specificity, the agreement to which the no direct solicitation provision is ancillary; (2) narrowly tailor the no direct solicitation provision to affect only employees who are anticipated to be directly involved in the arrangement; (3) identify with reasonable specificity the employees who are subject to the no direct solicitation provision; (4) include a specific termination date or event; and (5) sign the agreement, including any modifications to the agreement.

If the no direct solicitation provision relates to an oral agreement, Section V.C of the proposed Final Judgment requires Lucasfilm to maintain documents sufficient to show the terms of the no direct solicitation provision, including: (1) The specific agreement to which the no direct solicitation provision is ancillary; (2) an identification, with reasonable specificity, of the employees who are subject to the no direct solicitation provision; and (3) the no direct solicitation provision's specific termination date or event.[6]

The purpose of Sections V.B. and V.C. is to ensure that no direct solicitation provisions related to Lucasfilm's contracts with resellers, OEMs, and providers of services, and collaborations with other companies, are reasonably necessary to the contract or collaboration. In addition, the requirements set forth in Sections V.B and V.C of the proposed Final Judgment provide the United States with the ability to monitor Lucasfilm's compliance with the proposed Final Judgment.

Lucasfilm has a large number of routine consulting and services agreements that contain no direct solicitation provisions that may not comply with the terms of the proposed Final Judgment. To avoid the unnecessary burden of identifying these existing contracts and re-negotiating any no direct solicitation provisions, Section V.D of the proposed Final Judgment provides that, subject to the conditions below, Lucasfilm shall not be required to modify or conform existing no direct solicitation provisions included in consulting or services agreements to the extent such provisions violate this Final Judgment. The Final Judgment further prohibits Lucasfilm from enforcing any such existing no direct solicitation provision that would violate the proposed Final Judgment.

Finally, Section V.E of the proposed Final Judgment provides that Lucasfilm is not prohibited from unilaterally adopting or maintaining a policy not to consider applications from employees of another person, or not to solicit, cold call, recruit or hire employees of another person, provided that Lucasfilm does not request or pressure another person to adopt, enforce, or maintain such a policy.

C. Required Conduct

Section VI of the proposed Final Judgment sets forth various mandatory procedures to ensure Lucasfilm's compliance with the proposed Final Judgment, including providing officers, directors, human resource managers, and senior managers who supervise employee recruiting with copies of the

[4] Section II.C. of the proposed Final Judgment defines "no direct solicitation provision" as "any agreement, or part of an agreement, among two or more persons that restrains any person from cold calling, soliciting, recruiting, or otherwise competing for employees of another person."

[5] The Complaint alleges a violation of the Sherman Antitrust Act, 15 U.S.C. 1. The scope of the Final Judgment is limited to violations of the Federal antitrust laws. It prohibits certain conduct and specifies other conduct that the Judgment would not prohibit. The Judgment does not address whether any conduct it does not prohibit would be prohibited by other Federal or State laws, including California Business & Professions Code § 16600 (prohibiting firms from restraining employee movement).

[6] For example, Lucasfilm might document these requirements through electronic mail or in memoranda that it will retain.

proposed Final Judgment and annual briefings about its terms. Section VI.A.5 requires Lucasfilm to provide its employees with reasonably accessible notice of the existence of all agreements covered by Section V.A.5 and entered into by the company.

Under Section VI, Lucasfilm must file annually with the United States a statement identifying any agreement covered by Section V.A.5., and describing any violation or potential violation of the Final Judgment known to any officer, director, human resources manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts. If one of these persons learns of a violation or potential violation of the Judgment, Lucasfilm must take steps to terminate or modify the activity to comply with the Judgment and maintain all documents related to the activity.

D. Compliance

To facilitate monitoring of Lucasfilm's compliance with the proposed Final Judgment, Section VII grants the United States access, upon reasonable notice, to Lucasfilm's records and documents relating to matters contained in the proposed Final Judgment. Lucasfilm must also make its employees available for interviews or depositions about such matters. Moreover, upon request, Lucasfilm must answer interrogatories and prepare written reports relating to matters contained in the proposed Final Judgment.

V. Remedies Available to Potential Private Litigants

Section 4 of the Clayton Act, 15 U.S.C. 15, provides that any person who has been injured as a result of conduct prohibited by the antitrust laws may bring suit in Federal court to recover three times the damages the person has suffered, as well as costs and reasonable attorneys' fees. Entry of the proposed Final Judgment will neither impair nor assist the bringing of any private antitrust damage action. Under the provisions of Section 5(a) of the Clayton Act, 15 U.S.C. 16(a), the proposed Final Judgment has no *prima facie* effect in any subsequent private lawsuit that may be brought against Lucasfilm.

VI. Procedures Applicable for Approval or Modification of the Proposed Final Judgment

The United States and Lucasfilm have stipulated that the proposed Final Judgment may be entered by the Court after compliance with the provisions of the APPA, provided that the United States has not withdrawn its consent. The APPA conditions entry upon the Court's determination that the proposed Final Judgment is in the public interest.

The APPA provides a period of at least sixty (60) days preceding the effective date of the proposed Final Judgment within which any person may submit to the United States written comments regarding the proposed Final Judgment. Any person who wishes to comment should do so within sixty (60) days of the date of publication of this Competitive Impact Statement in the **Federal Register**, or the last date of publication in a newspaper of the summary of this Competitive Impact Statement, whichever is later. All comments received during this period will be considered by the United States, which remains free to withdraw its consent to the proposed Final Judgment at any time prior to the Court's entry of judgment. The comments and the response of the United States will be filed with the Court and published in the **Federal Register**.

Written comments should be submitted to: James J. Tierney, Chief, Networks & Technology Enforcement Section, Antitrust Division, United States Department of Justice, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.

The proposed Final Judgment provides that the Court retains jurisdiction over this action, and the parties may apply to the Court for any order necessary or appropriate for the modification, interpretation, or enforcement of the Final Judgment.

VII. Alternatives to the Proposed Final Judgment

The United States considered, as an alternative to the proposed Final Judgment, a full trial on the merits against Lucasfilm. The United States is satisfied, however, that the relief contained in the proposed Final Judgment will quickly establish, preserve, and ensure that employees can benefit from competition between Lucasfilm and others. Thus, the proposed Final Judgment would achieve all or substantially all of the relief the United States would have obtained through litigation, but avoids the time, expense, and uncertainty of a full trial on the merits of the Complaint.

VIII. Standard of Review Under the APPA for Proposed Final Judgment

The Clayton Act, as amended by the APPA, requires that proposed consent judgments in antitrust cases brought by the United States be subject to a sixty-day comment period, after which the Court shall determine whether entry of the proposed Final Judgment "is in the public interest." 15 U.S.C. 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, is required to consider:

(A) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and

(B) The impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. 16(e)(1)(A) & (B). In considering these statutory factors, the Court's inquiry is necessarily a limited one as the United States is entitled to "broad discretion to settle with the Defendant within the reaches of the public interest." *United States* v. *Microsoft Corp.,* 56 F.3d 1448, 1461 (DC Cir. 1995); *see generally United States* v. *SBC Commc'ns, Inc.,* 489 F. Supp. 2d 1 (D.D.C. 2007) (assessing public interest standard under the Tunney Act); *United States* v. *InBev N.V./S.A.,* 2009–2 Trade Cas. (CCH) ¶ 76,736, 2009 U.S. Dist. LEXIS 84787, No. 08–1965 (JR), at *3 (D.D.C. Aug. 11, 2009) (noting that the court's review of a consent judgment is limited and only inquires "into whether the government's determination that the proposed remedies will cure the antitrust violations alleged in the complaint was reasonable, and whether the mechanism to enforce the final judgment are clear and manageable").[7]

Under the APPA a court considers, among other things, the relationship between the remedy secured and the specific allegations set forth in the United States' complaint, whether the decree is sufficiently clear, whether enforcement mechanisms are sufficient, and whether the decree may positively harm third parties. *See Microsoft,* 56 F.3d at 1458–62. With respect to the adequacy of the relief secured by the

[7] The 2004 amendments substituted "shall" for "may" in directing relevant factors for a court to consider and amended the list of factors to focus on competitive considerations and to address potentially ambiguous judgment terms. *Compare* 15 U.S.C. 16(e) (2004), with 15 U.S.C. 16(e)(1) (2006); *see* also SBC Commc'ns, 489 F. Supp. 2d at 11 (concluding that the 2004 amendments "effected minimal changes" to Tunney Act review).

decree, a court may not "engage in an unrestricted evaluation of what relief would best serve the public." *United States* v. *BNS, Inc.,* 858 F.2d 456, 462 (9th Cir. 1988) (citing *United States* v. *Bechtel Corp.,* 648 F.2d 660, 666 (9th Cir. 1981)); *see also Microsoft,* 56 F.3d at 1460–62; *United States* v. *Alcoa, Inc.,* 152 F. Supp. 2d 37, 40 (D.D.C. 2001); *InBev,* 2009 U.S. Dist. LEXIS 84787, at *3. Courts have held that:

> [t]he balancing of competing social and political interests affected by a proposed antitrust consent decree must be left, in the first instance, to the discretion of the Attorney General. The court's role in protecting the public interest is one of insuring that the government has not breached its duty to the public in consenting to the decree. The court is required to determine not whether a particular decree is the one that will best serve society, but whether the settlement is '*within the reaches of the public interest.*' More elaborate requirements might undermine the effectiveness of antitrust enforcement by consent decree.

Bechtel, 648 F.2d at 666 (emphasis added) (citations omitted).[8] In determining whether a proposed settlement is in the public interest, a district court "must accord deference to the government's predictions about the efficacy of its remedies, and may not require that the remedies perfectly match the alleged violations." *SBC Commc'ns,* 489 F. Supp. 2d at 17; *see also Microsoft,* 56 F.3d at 1461 (noting the need for courts to be "deferential to the government's predictions as to the effect of the proposed remedies"); *United States* v. *Archer-Daniels-Midland Co.,* 272 F. Supp. 2d 1, 6 (D.D.C. 2003) (noting that the court should grant due respect to the United States' prediction as to the effect of proposed remedies, its perception of the market structure, and its views of the nature of the case).

In addition, "a proposed decree must be approved even if it falls short of the remedy the court would impose on its own, as long as it falls within the range of acceptability or is 'within the reaches of public interest.' " *United States* v. *American Tel. & Tel. Co.,* 552 F. Supp. 131, 151 (D.D.C. 1982) (citations omitted) (quoting *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975)), *aff'd sub nom. Maryland* v. *United States,* 460 U.S. 1001 (1983); *see also United States* v. *Alcan Aluminum Ltd.,* 605 F. Supp. 619, 622 (W.D. Ky. 1985) (approving the consent decree even though the court would have imposed a greater remedy). To meet this standard, the United States "need only provide a factual basis for concluding that the settlements are reasonably adequate remedies for the alleged harms." *SBC Commc'ns,* 489 F. Supp. 2d at 17.

Moreover, the Court's role under the APPA is limited to reviewing the remedy in relationship to the violations that the United States has alleged in its Complaint, and does not authorize the court to "construct [its] own hypothetical case and then evaluate the decree against that case." *Microsoft,* 56 F.3d at 1459; *see also InBev,* 2009 U.S. Dist. LEXIS 84787, at *20 ("[T]he 'public interest' is not to be measured by comparing the violations alleged in the complaint against those the court believes could have, or even should have, been alleged."). Because the "court's authority to review the decree depends entirely on the government's exercising its prosecutorial discretion by bringing a case in the first place," it follows that "the court is only authorized to review the decree itself," and not to "effectively redraft the complaint" to inquire into other matters that the United States did not pursue. *Microsoft,* 56 F.3d. at 1459–60. Courts "cannot look beyond the complaint in making the public interest determination unless the complaint is drafted so narrowly as to make a mockery of judicial power." *SBC Commc'ns,* 489 F. Supp. 2d at 15.

In its 2004 amendments, Congress made clear its intent to preserve the practical benefits of utilizing consent decrees in antitrust enforcement, adding the unambiguous instruction that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. 16(e)(2). This language effectuates what Congress intended when it enacted the Tunney Act in 1974, as Senator Tunney explained: "[t]he court is nowhere compelled to go to trial or to engage in extended proceedings which might have the effect of vitiating the benefits of prompt and less costly settlement through the consent decree process." 119 *Cong. Rec.* 24,598 (1973) (statement of Senator Tunney). Rather, the procedure for the public interest determination is left to the discretion of the Court, with the recognition that the court's "scope of review remains sharply proscribed by precedent and the nature of Tunney Act proceedings." *SBC Commc'ns,* 489 F. Supp. 2d at 11.[9]

IX. Determinative Documents

There are no determinative materials or documents within the meaning of the APPA that the United States considered in formulating the proposed Final Judgment.

Dated: December 21, 2010.

Respectfully submitted,
Adam T. Severt,
Ryan S. Struve (DC Bar #495406),
Jessica N. Butler-Arkow (DC Bar #430022),
H. Joseph Pinto III,
Anthony D. Scicchitano,
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United States District Court for the District of Columbia

United States of America, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530, *Plaintiff,* v. Lucasfilm Ltd., 1110 Gorgas Avenue, San Francisco, CA 94129, *Defendant.*

[Proposed] Final Judgment

Whereas, the United States of America filed its Complaint on December 21, 2010, alleging that the Defendant participated in an agreement in violation of Section One of the Sherman Act, and the United States and the Defendant, by their attorneys, have consented to the entry of this Final Judgment without trial or adjudication of any issue of fact or law;

And whereas this Final Judgment does not constitute any admission by the Defendant that the law has been violated or of any issue of fact or law, other than that the jurisdictional facts as alleged in the Complaint are true;

And whereas, the Defendant agrees to be bound by the provisions of this Final

[8] *Cf. BNS,* 858 F.2d at 464 (holding that the court's "ultimate authority under the [APPA] is limited to approving or disapproving the consent decree"); *United States* v. *Gillette Co.,* 406 F. Supp. 713, 716 (D. Mass. 1975) (noting that, in this way, the court is constrained to 'look at the overall picture not hypercritically, nor with a microscope, but with an artist's reducing glass'). *See generally Microsoft,* 56 F.3d at 1461 (discussing whether "the remedies [obtained in the decree are] so inconsonant with the allegations charged as to fall outside of the 'reaches of the public interest.' ").

[9] *See United States* v. *Enova Corp.,* 107 F. Supp. 2d 10, 17 (D.D.C. 2000) (noting that the "Tunney Act expressly allows the court to make its public interest determination on the basis of the competitive impact statement and response to comments alone"); *United States* v. *Mid-Am. Dairymen, Inc.,* 1977–1 Trade Cas. (CCH) ¶ 61,508, at 71,980 (W.D. Mo. 1977) ("Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government in the competitive impact statement and its responses to comments in order to determine whether those explanations are reasonable under the circumstances."); S. Rep. No. 93–298, 93d Cong., 1st Sess., at 6 (1973) ("Where the public interest can be meaningfully evaluated simply on the basis of briefs and oral arguments, that is the approach that should be utilized.").

Judgment pending its approval by this Court;

Now therefore, before any testimony is taken, without trial or adjudication of any issue of fact or law, and upon consent of the Defendant, it is *ordered, adjudged, and decreed.*

I. Jurisdiction

This Court has jurisdiction over the subject matter and the parties to this action. The Complaint states a claim upon which relief may be granted against the Defendant under Section One of the Sherman Act, as amended, 15 U.S.C. 1.

II. Definitions

As used in this Final Judgment:

A. "Lucasfilm" means Lucasfilm Ltd., its (i) successors and assigns, (ii) controlled subsidiaries, divisions, groups, affiliates, partnerships, and joint ventures, and (iii) directors, officers, managers, agents acting within the scope of their agency, and employees.

B. "Agreement" means any contract, arrangement, or understanding, formal or informal, oral or written, between two or more persons.

C. "No direct solicitation provision" means any agreement, or part of an agreement, among two or more persons that restrains any person from cold calling, soliciting, recruiting, or otherwise competing for employees of another person.

D. "Person" means any natural person, corporation, company, partnership, joint venture, firm, association, proprietorship, agency, board, authority, commission, office, or other business or legal entity, whether private or governmental.

E. "Senior manager" means any company officer or employee above the level of vice president.

III. Applicability

This Final Judgment applies to Lucasfilm, as defined in Section II, and to all other persons in active concert or participation with Lucasfilm who receive actual notice of this Final Judgment by personal service or otherwise.

IV. Prohibited Conduct

The Defendant is enjoined from attempting to enter into, entering into, maintaining or enforcing any agreement with any other person to in any way refrain from, requesting that any person in any way refrain from, or pressuring any person in any way to refrain from soliciting, cold calling, recruiting, or otherwise competing for employees of the other person.

V. Conduct Not Prohibited

A. Nothing in Section IV shall prohibit the Defendant and any other person from attempting to enter into, entering into, maintaining or enforcing a no direct solicitation provision, provided the no direct solicitation provision is:

1. Contained within existing and future employment or severance agreements with the Defendant's employees;

2. Reasonably necessary for mergers or acquisitions, consummated or unconsummated, investments, or divestitures, including due diligence related thereto;

3. Reasonably necessary for contracts with consultants or recipients of consulting services, auditors, outsourcing vendors, recruiting agencies or providers of temporary employees or contract workers;

4. Reasonably necessary for the settlement or compromise of legal disputes; or

5. Reasonably necessary for (i) contracts with resellers or OEMs; (ii) contracts with providers or recipients of services other than those enumerated in paragraphs V.A. 1–4 above; or (iii) the function of a legitimate collaboration agreement, such as joint development, technology integration, joint ventures, joint projects (including teaming agreements), and the shared use of facilities.

B. All no direct solicitation provisions that relate to written agreements described in Section V.A.5.i, ii, or iii, that the Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment shall:

1. Identify, with specificity, the agreement to which it is ancillary;

2. Be narrowly tailored to affect only employees who are anticipated to be directly involved in the agreement;

3. Identify with reasonable specificity the employees who are subject to the agreement;

4. Contain a specific termination date or event; and

5. Be signed by all parties to the agreement, including any modifications to the agreement.

C. For all no direct solicitation provisions that relate to unwritten agreements described in Section V.A.5.i, ii, or iii, that the Defendant enters into, renews, or affirmatively extends after the date of entry of this Final Judgment, the Defendant shall maintain documents sufficient to show:

1. The specific agreement to which the no direct solicitation provision is ancillary;

2. The employees, identified with reasonable specificity, who are subject to the no direct solicitation provision; and

3. The provision's specific termination date or event.

D. The Defendant shall not be required to modify or conform, but shall not enforce, any no direct solicitation provision to the extent it violates this Final Judgment if the no direct solicitation provision appears in the Defendant's consulting or services agreements in effect as of the date of this Final Judgment (or in effect as of the time the Defendant acquires a company that is a party to such an agreement).

E. Nothing in Section IV shall prohibit the Defendant from unilaterally deciding to adopt a policy not to consider applications from employees of another person, or to solicit, cold call, recruit or hire employees of another person, provided that the Defendant is prohibited from requesting that any other person adopt, enforce, or maintain such a policy, and is prohibited from pressuring any other person to adopt, enforce, or maintain such a policy.

VI. Required Conduct

A. The Defendant shall:

1. Furnish a copy of this Final Judgment and related Competitive Impact Statement within sixty days of entry of the Final Judgment to its officers, directors, human resources managers, and senior managers who supervise employee recruiting, solicitation, or hiring efforts;

2. Furnish a copy of this Final Judgment and related Competitive Impact Statement to any person who succeeds to a position described in Section VI.A.1 within thirty days of that succession;

3. Annually brief each person designated in Sections VI.A.1 and VI.A.2 on the meaning and requirements of this Final Judgment and the antitrust laws;

4. Obtain from each person designated in Sections VI.A.1 and VI.A.2, within 60 days of that person's receipt of the Final Judgment, a certification that he or she (i) has read and, to the best of his or her ability, understands and agrees to abide by the terms of this Final Judgment; (ii) is not aware of any violation of the Final Judgment that has not been reported to the Defendant; and (iii) understands that any person's failure to comply with this Final Judgment may result in an enforcement action for civil or criminal contempt of court against the Defendant and/or any person who violates this Final Judgment;

5. Provide employees reasonably accessible notice of the existence of all agreements covered by Section V.A.5 and entered into by the company; and

6. Maintain (i) a copy of all agreements covered by Section V.A.5; and (ii) a record of certifications received pursuant to this Section.

B. For five (5) years after the entry of this Final Judgment, on or before its anniversary date, the Defendant shall file with the United States an annual statement identifying and providing copies of any agreement and any modifications thereto described in Section V.A.5, as well as describing any violation or potential violation of this Final Judgment known to any officer, director, human resources manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts. Descriptions of violations or potential violations of this Final Judgment shall include, to the extent practicable, a description of any communications constituting the violation or potential violation, including the date and place of the communication, the persons involved, and the subject matter of the communication.

C. If any officer, director, human resources manager, or senior manager who supervises employee recruiting, solicitation, or hiring efforts of the Defendant learns of any violation or potential violation of any of the terms and conditions contained in this Final Judgment, the Defendant shall promptly take appropriate action to terminate or modify the activity so as to comply with this Final Judgment and maintain all documents related to any violation or potential violation of this Final Judgment.

VII. Compliance Inspection

A. For the purposes of determining or securing compliance with this Final Judgment, or of determining whether the Final Judgment should be modified or vacated, from time to time authorized representatives of the United States Department of Justice, including consultants and other persons retained by the United States, shall, upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, and on reasonable notice to the Defendant, subject to any legally recognized privilege, be permitted:

1. Access during the Defendant's regular office hours to inspect and copy, or at the option of the United States, to require the Defendant to provide electronic or hard copies of, all books, ledgers, accounts, records, data, and documents in the possession, custody, or control of the Defendant, relating to any matters contained in this Final Judgment; and

2. To interview, either informally or on the record, the Defendant's officers, employees, or agents, who may have their counsel, including any individual counsel, present, regarding such matters. The interviews shall be subject to the reasonable convenience of the interviewee and without restraint or interference by the Defendant.

B. Upon the written request of an authorized representative of the Assistant Attorney General in charge of the Antitrust Division, the Defendant shall submit written reports or responses to written interrogatories, under oath if requested, relating to any of the matters contained in this Final Judgment as may be requested.

C. No information or documents obtained by the means provided in this section shall be divulged by the United States to any person other than an authorized representative of the executive branch of the United States, except in the course of legal proceedings to which the United States is a party (including grand jury proceedings), or for the purpose of securing compliance with this Final Judgment, or as otherwise required by law.

D. If at the time information or documents are furnished by the Defendant to the United States, the Defendant represents and identifies in writing the material in any such information or documents to which a claim of protection may be asserted under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure, and the Defendant marks each pertinent page of such material, "Subject to claim of protection under Rule 26(c)(1)(G) of the Federal Rules of Civil Procedure," then the United States shall give the Defendant ten (10) calendar days notice prior to divulging such material in any legal proceeding (other than a grand jury proceeding).

VIII. Retention of Jurisdiction

This Court retains jurisdiction to enable any party to this Final Judgment to apply to this Court at any time for further orders and directions as may be necessary or appropriate to carry out or construe this Final Judgment, to modify any of its provisions, to enforce compliance, and to punish violations of its provisions.

IX. Expiration of Final Judgment

Unless this court grants an extension, this Final Judgment shall expire five (5) years from the date of its approval by the Court.

X. Notice

For purposes of this Final Judgment, any notice or other communication shall be given to the persons at the addresses set forth below (or such other addresses as they may specify in writing to Lucasfilm):

Chief, Networks & Technology Enforcement Section, U.S. Department of Justice, Antitrust Division, 450 Fifth Street, NW., Suite 7100, Washington, DC 20530.

XI. Public Interest Determination

Entry of this Final Judgment is in the public interest. The parties have complied with the Procedures of the Antitrust Procedures and Penalties Act, 15 U.S.C. 16, including making copies available to the public of this Final Judgment, the Competitive Impact Statement, and any comments thereon and the United States' responses to comments. Based upon the record before the Court, which includes the Competitive Impact Statement and any comments and response to comments filed with the Court, entry of this final judgment is in the public interest.

Court approval subject to procedures of Antitrust Procedures and Penalties Act, 15 U.S.C. 16, United States District Judge.

[FR Doc. 2010–32601 Filed 12–27–10; 8:45 am]

BILLING CODE P

DEPARTMENT OF LABOR

Office of the Secretary

Agency Information Collection Activities; Submission for OMB Review; Comment Request; Affordable Care Act Enrollment Opportunity Notice—Prohibition on Lifetime Limits

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) hereby announces the submission of the Employee Benefits Security Administration (EBSA) sponsored information collection request (ICR) titled, "Affordable Care Act Enrollment Opportunity Notice—Prohibition on Lifetime Limits," to the Office of Management and Budget (OMB) for review and approval for continued use in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. chapter 35).

DATES: Submit comments on or before January 27, 2011.

ADDRESSES: A copy of this ICR, with applicable supporting documentation; including a description of the likely respondents, proposed frequency of response, and estimated total burden may be obtained from the RegInfo.gov Web site, *http://www.reginfo.gov/public/do/PRAMain* or by contacting Michel Smyth by telephone at 202–693–